Local Union No. 12, Distillery, Rectifying, Wine and Allied Workers International Union of America, AFL-CIO *and* Distribution Systems Division, AJF Industries

Local 600, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Distribution Systems Division, AJF Industries. Cases 14-CD-625 and 14-CD-626

September 9, 1981

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Distribution Systems Division, AJF Industries, herein called the Employer, alleging that Local Union No. 12, Distillery, Rectifying, Wine and Allied Workers International Union of America, AFL-CIO, herein called Local 12, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Local 600, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 600, and that Local 600 had also violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Local 12.

Pursuant to notice, a hearing was held before Hearing Officer Robert S. Seigel on March 16, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on this issue. Thereafter, the Employer, Local 12, and Local 600 each filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Missouri corporation, is engaged in the warehousing and distribution of general dry goods and drugs at its Ramsey, New Jersey, and St. Louis, Earth City, and Maryland Heights, Missouri, facilities. During the preceding 12 months, the Employer in the course and conduct of its business operations performed warehousing and related services valued in excess of $50,000, of which services valued in excess of $50,000 were performed in and for various enterprises located in States other than Missouri. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 12 and Local 600 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

At the hearing, Local 12 stated it was claiming all the work at the Earth City warehouse consisting of the following:

> [H]andling of originally shipped food stuffs; moving materials onto and off of conveyor belts; handling, coordinating and reporting batch and serial numbers; handling the breaking down of packages into small lots and placing them into boxes for particular shipment orders; packing materials and weighing them for retail orders; movement of individual packages of small appliances, including heaters; movement, storage and inventory control of originally shipped items; maintaining sanitary conditions in cleaning up areas where items including food stuffs are stored, counted, or sorted; utilizing meter machines for the United Parcel Service shipment of packages; and working in areas where large metal shelves (flow racks) permit storage of items too small for placement on pallets.

Local 600, at the hearing, stated that it was claiming all the work of the Earth City warehouse which involved the handling of all products other than those related to drugs, liquors, or personal toiletry items. Local 600 also expressly disclaimed at the hearing all work at that warehouse involving the following operations: moving materials on and off conveyor belts; handling, incorporating, and reporting batch and serial numbers; and the breakdown of packages into smaller lots and placing them in boxes for shipment orders. Local 600 is not

claiming work involving these functions because it contends that at this time these functions involve only drug- and liquor-related products. The parties stipulated that the work expressly disclaimed by Local 600 was not a part of the work in dispute.

On the basis of the above, and the record as a whole, we find that the work in dispute consists of the following: the handling of all products other than those related to drugs, liquors, or personal toiletry items, which involve the handling of originally shipped food stuffs; packing materials and weighing them for retail orders; movement of individual packages of small appliances, including heaters; movement, storage, and inventory control of originally shipped items; maintaining sanitary conditions in cleaning up areas where items including food stuffs are stored, counted, or sorted; utilizing meter machines for the United Parcel Service shipment of packages; or working in areas where large metal shelves (flow racks) permit storage of items too small for placement on pallets at the Earth City warehouse.

B. *Background and Facts of the Dispute*

The Employer operates three public warehouses in the St. Louis area and one warehouse in New Jersey.[1] The Employer's assignment of a client's products to a particular warehouse depends upon the storage and handling requirements of the product involved. This proceeding is solely concerned with the Employer's Earth City warehouse, the location of the work in dispute.

The Employer has for several years been a party to collective-bargaining agreements with both Local 600 and Local 12. Historically, only employees represented by Local 600 have worked at the City of St. Louis warehouse. In 1977, the Employer opened the Earth City warehouse, and until March 1978 only employees represented by Local 12 worked at this location.[2] However, in March 1978, the Employer moved a large account for a local chain of discount stores to its Earth City facility and transferred to that facility employees represented by Local 600. Since that date, both Local 12 and Local 600 have represented certain employees working at the Earth City warehouse. The work in dispute, however, is currently performed solely by employees represented by Local 12 at the Earth City facility.

On or about January 23, 1981, the Employer's office manager, Anthony Eftink, received a telephone call from a person who identified himself as a business representative for Local 600, Rudy Tesson. Tesson informed Eftink that Local 600 was concerned about the Employer's layoff of employees represented by Local 600.[3] Tesson told Eftink that if the Employer laid off any more employees represented by Local 600 he would put up a picket line. Tesson further protested the Employer's alleged transfer of work formerly done by employees represented by Local 600 to employees represented by Local 12.

Subsequently, on February 2, Tesson informed the Employer's director of warehousing, Harold Leeman, that employees represented by Local 600 had filed a grievance. Tesson did not tender a grievance at that time but the Employer later received a grievance from Local 600 protesting the layoff of employees represented by Local 600, allegedly because employees represented by Local 12 were doing work which should properly have been assigned to employees represented by Local 600.

On February 9, Local 12 President Ike Pace sent a letter to the Employer in which he protested that Local 600, by filing the above-described grievance, was improperly trying to take work away from employees represented by Local 12 and have that work assigned to employees represented by Local 600. Pace's letter stated that employees represented by Local 12 would be called upon to strike the Employer and proceed with picketing until the matter of the work assignment was settled. Neither Union, however, has engaged in a strike or picketing at any of the Employer's facilities at the present time.

C. *The Contentions of the Parties*

The Employer contends that the disputed work should be assigned to employees represented by Local 12 because (1) employees represented by Local 12 have been performing the work for several years; (2) it is more efficient and economical to have the work performed by employees represented by Local 12; (3) areawide custom and practice would not be contrary to such an award; (4) the skills required for performing the work are currently possessed by the employees represented by Local 12 but not by the employees represented by Local 600; and (5) safety requirements and Federal regulations demand that the disputed work be assigned to employees represented by Local 12.

[1] One of the Employer's St. Louis area warehouses, located in Maryland Heights, Missouri, is currently a leased operation and none of the Employer's employees works there on a regular basis.

[2] According to uncontradicted testimony, at the time of the opening of this facility the Employer advised the employees represented by Local 12 that the Earth City warehouse would be a "drug warehouse" and that only these employees would work there.

[3] The record does not show whether Tesson referred to any specific layoffs. However, the record does show that the two most recent layoffs of employees represented by Local 600 occurred at the Earth City warehouse.

Local 12 takes essentially the same position as the Employer but adds the contentions that the disputed work should be assigned to employees it represents because it is a party to a collective-bargaining agreement with the Employer covering such work. Local 12 also asserts that a reassignment of the disputed work to employees represented by Local 600 would result in the partial or total layoff of several employees of the Employer who are currently represented by Local 12.

It is Local 600's position that the disputed work should be assigned to the employees it represents because (1) it is a party to a collective-bargaining agreement with this and other employers covering this work; (2) this work has been traditionally performed by employees whom it represents both for this and for other employers in the area; (3) the employees it represents possess the necessary skills, aptitude, and knowledge of equipment to perform the disputed work; and (4) industrywide custom and practice favor assignment of this work to the employees it represents.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and the parties have not agreed upon a method which is binding on all of the parties for the voluntary adjustment of the dispute. The testimony of Office Manager Eftink indicates that by a telephone call to the Employer on January 23, 1981, Local 600 indicated its intention to picket unless the Employer assigned the work in dispute to the employees it represents. The record also reveals that by letter dated February 9, 1981, Local 12 indicated its intention to strike and picket unless the Employer assigned the work in dispute to the employees it represents. Neither party has since disclaimed the work in dispute. Accordingly, we find that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated. The record contains no evidence that an agreed-upon method exists for the voluntary adjustment of the dispute. Accordingly, we find the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[4] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[5]

The following factors are relevant in making the determination of the dispute before us:

1. Certification and collective-bargaining agreements

There is no evidence that either of the contending Unions has ever been certified by the Board. Each Union's collective-bargaining agreement with the Employer broadly covers the disputed work. Local 600's contract (art. 40, sec. 1(a)) provides:

> The execution of this Supplemental Agreement (herein after referred to as "Agreement") on the part of the Employer shall cover all truck-drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, and such other employees as may be presently or hereafter represented by the Union, engaged in local pick-up, delivery, and assembly of freight located within the jurisdiction of the Local Union, not to exceed a radius of twenty-five (25) miles.

The contract (art. 2, sec. 2(d)) also provides:

> The jurisdiction covered by the National Master Freight Agreement and its various Supplements thereto includes, without limitation, stuffing, stripping, loading and discharging of cargo or containers.

Local 12's contract (art. 2, sec. (1)) provides:

> The Company recognizes the Union as the sole collective agency representing all of its production and warehouse employees who are employed in its drug department, and agrees to treat and negotiate with the Union for and on behalf of such employees in matters relating to wages, hours, and working conditions.

The Employer's director of warehousing, Harold Leeman, and Local 12's president, Ike Pace, testified without contradiction that the Employer and Local 12 have interpreted the recognition language to include any work performed by Local 12. The record establishes that, at least since 1967, this work has included the handling of items other than those directly related to drugs. Leeman and Pace also testified that the contract language has never served to limit the kinds of goods handled by Local 12.

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[4] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[5] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

Both collective-bargaining agreements broadly cover the disputed work, but neither specifically covers this work. Accordingly, we find that this factor is not helpful to our determination.

2. Employer practice and preference

The record shows that the Employer has regularly assigned the work in dispute to employees represented by Local 12. Moreover, with one temporary exception, the employer has never assigned the disputed work to employees represented by Local 600.[6] Because the Employer has stated its preference to continue such assignment, we find that the factors of employer practice and preference favor awarding the work to employees represented by Local 12.

3. Industry and area practice

The record shows that employees represented by Local 12 perform work similar to the work in dispute at one other facility, not owned by the Employer, in the St. Louis, Missouri, area. In addition, employees represented by another local of Distillery, Rectifying, Wine and Allied Workers International Union of North America, AFL-CIO, perform similar work at the Employer's New Jersey facility, where only 8 percent of the work is strictly drug related. Evidence also shows that employees represented by Local 600, its International, and other affiliated locals perform numerous general warehousing functions for employers in the St. Louis area as well as throughout the United States. Accordingly, this factor does not favor an award of the work to either group of employees.

4. Skills and training

Testimony establishes that the work in dispute is basically low-skill labor. Although the skills required to perform the various tasks mentioned in the definition of the work in dispute are reasonably obtainable by any literate person, the Employer believes that it takes a month of training to assimilate the safety and sanitation requirements imposed by Federal agencies and to qualify its employees to adequately perform the recordkeeping and machine operations entailed. Employees represented by Local 12 have received such training. On the other hand, uncontradicted testimony shows that there is no training program whatsoever for employees represented by Local 600 who traditionally perform a much more general type of warehousing which does not require the high degree of accuracy and care required by the work of those employees represented by Local 12. Accordingly, we find that the factor of employee skills and training slightly favors an award to the employees represented by Local 12.

5. Economy and efficiency of operations

The Employer's director of warehousing, Harold Leeman, testified that the Employer considers it more efficient and economical for the employees represented by Local 12 to perform the work in dispute. These employees are experienced and have already been properly instructed about the adverse economic consequences for failing to meet the various product-handling requirements of the Federal Drug Administration, the Drug Enforcement Administration, and the United Parcel Service. The Employer contends that it would be economically inexpedient to train employees represented by Local 600 for a month to learn the skills and regulations already known by experienced Local 12 employees. Accordingly, economy and efficiency of operations favor an award to the employees represented by Local 12.

6. Job displacement

Local 12 has a seniority list[7] of 11 employees. Currently, nine of these are working for the Employer and two are on sick leave. In addition, two extra persons are currently working under the terms and conditions of the Local 12 contract. Local 600 has 15 employees on its seniority list. Currently, 4 are employed by the Employer, 1 is on sick leave, and 10 are on layoff. Both Unions have experienced additional layoffs in the recent past. Uncontradicted testimony shows that the Employer has lost several customers over the period of these layoffs. Because the Employer assigns customer accounts based on specific space and handling needs, loss of a single account has a direct impact on the hours worked by the particular group of employees handling that account. For example, the record indicates that if the employees represented by Local 600 were awarded the disputed work, it would be necessary for the Employer to lay off two or three employees represented by Local 12. Accordingly, this factor does not favor

[6] As a favor to a friend of one of the Employer's supervisors, the Employer had temporarily assigned the unloading of Kero-Sun heaters, part of the work in dispute, to laid-off employees represented by Local 600. During this assignment, however, employees represented by Local 12 continued to perform the serial number recording of the heaters. The handling of the Kero-Sun account is now exclusively assigned to employees represented by Local 12.

[7] Because the employees represented by Local 12 work only at the Earth City warehouse, there is only one seniority list for these employees. Local 600 also has only one seniority list for the employees it represents although they work at both the Earth City and St. Louis warehouses. We note, however, that only one employee represented by Local 600 was employed at the St. Louis warehouse at the time of the hearing.

an award of the work to either group of employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that employees who are represented by Local 12 are entitled to perform the work in dispute at the Earth City warehouse. We reach this conclusion relying on the factors of employer practice and preference, economy and efficiency of operation, and the relative skills and training required. In making this determination, we are awarding the work in question to employees who are represented by Local 12, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Distribution Systems Division, AJF Industries, who are represented by Local Union No. 12, Distillery, Rectifying, Wine and Allied Workers International Union of America, AFL-CIO, are entitled to perform the above-described work (sec. III,A) in dispute at the Employer's Earth City, Missouri, facility.

2. Local 600, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Distribution Systems Division, AJF Industries, to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 600, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall notify the Regional Director for Region 14, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.